In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.16750 of 1999.

Date of decision:6.9.2006.

Hindustan Petroleum Corporation Limited.

...Petitioner.

Versus

The State of Punjab and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Anil Malhotra, Advocate for the petitioner.

Mr.T.S.Chauhan, Additional Advocate General,Punjab for respondent Nos.1 and 2.

Mr.M.S.Kang Advocate for respondent Nos.6 and 7.

Mr.M.S.Khaira, Senior Advocate with Ms.Anjali Kukkar, Advocate for the respondents.

Judgment.

S. N. Aggarwal, J.

Hindustan Petroleum Corporation Limited (to be referred as the petitioner-Corporation) decided to open in village Suchi Pind, district Jalandhar Petroleum Oil Depot for storage and distribution facilities for various petroleum products. They requested the State of Punjab (respondent No.1) vide letter dated 18.4.1994 to acquire about

14 acres 3 marlas of land in the said village. Accordingly, respondent No.1 issued notification dated 25.6.1996 under Section 4 of the Land Acquisition Act, 1894 (Act of 1894) for acquiring land measuring 13 acres, 5 kanals and 2 marlas in village Suchi Pind. It was followed by a notification dated 7.1.1997 under Section 6 of the Act of 1894. Respondent No.1 vide letter dated 26.2.1997 informed the petitioner-Corporation that the tentative price of the land acquired was about 16 lacs per acre and 80% of the amount so determined was remitted by the petitioner-Corporation to the Land Acquisition Collector-cum Sub Divisional Magistrate (Civil), Jalandhar, (respondent No.2) vide demand draft dated 5.3.1997. However, vide award dated 6.1.1999, (Annexure P-6), respondent No.2 awarded compensation for the acquired land at the rate of Rs.27 lacs per acre. It has been challenged in the present writ petition.

To complete the narration of facts, it may also be mentioned that some of the land owners had filed land references under Section 18 of the Act of 1894 in the Court of Additional District Judge, Jalandhar for claiming compensation at enhanced rate from Rs.27 lacs per acre but the Additional District Judge, Jalandhar-cum-Land Acquisition Tribunal vide judgment dated 17.1.2003 up-held the compensation awarded by the Land Acquisition Collector at the rate of Rs.27 lacs per acre and accordingly the petition filed by the land owners was dismissed. It was conceded before me by the learned

counsel for the parties that the said judgment has become final.

The submission of learned counsel for the petitioner was that originally the Collector had assessed the amount of compensation at the rate of Rs.16 lacs per acre. As per pleadings made by the respondent-State in the written statement, this calculation was made by the Collector after taking into account 34 sale transactions. However, vide award dated 6.1.1999 by which the rate of compensation was enhanced from Rs.16 lacs per acre to Rs.27 lacs per acre, not even a single sale transaction has been taken into account. Therefore, the award dated 6.1.1999 is arbitrary and without any basis.

It was further submitted by the learned counsel for the petitioner that Section 11 of Act of 1894 lays down the procedure which was to be followed while assessing the rate of compensation. According to this provision, it is the Collector who is to assess the compensation for the land acquired but the respondents have violated the provisions of this Section by adopting another method of calculating the amount of compensation by relying upon the findings recorded by the District Land Price Fixation Committee (in short DLPF Committee) which is clearly in contravention of the provisions of Section 11 of Act of 1894.

All these submissions have been considered.

Section 11 of Act of 1894 reads as under:-

“11. Enquiry and award by Collector.-(1) On the day so

fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land and at the date of the publication of the notification under section 4, sub-section (1) and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land,of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of

cases as the appropriate Government may specify in this behalf.

(2) .. ..

(3) ... ...

(4) ... ..."

The perusal of this Section reveals that the Collector has to enquire into the rate of the land as it was on the date of the publication of the notification under Section 4(1) of the Act of 1894. Sub section (1) of Section 55 of the Act of 1894 empowers the State Government to make rules consistent with the Act for the guidance of officers in all matters connected with its enforcement. The State Government is further empowered to alter and add to the rules, so made, from time to time. In pursuance of the power vested in the State Government under Section 55 of the Act of 1894, the State Government has drafted Standing Order 28 relating to the acquisition of land. Para No.12 of Standing Order No.28 reads as under:-

"12. On receipt of the application, the Collector of the District will furnish data in the shape of rates per acre of the different kinds of land alongwith a preliminary estimate of the value of trees, buildings and other property,if any, for which compensation will have to be paid. The rates of land per acre will be worked out by the District Collector after taking into account average rate per acre determined

from the sale transactions in the Revenue Estate concerned for a period of one year preceding the date of notification under Section 4 of the Act. It should also indicate whether these average market rates would be appropriate for the land proposed to be acquired. The fact whether the land to be acquired has any special features such as nearness to the abadi and main road which may justify a higher price than the average rate or where there were any special features in the lands sold during the last one year (e.g. sale of small pieces of land for abadi purposes or near a main road) which may justify approval of rates lower than the average rates,should also be indicated. The sale transactions during the year preceding the notification under Section 4 of the Act and the average rates proposed should be indicated by the C.R.O in the Proforma given below while submitting the rate to Collector for approval."

This para, however, was amended by the State Government vide letter dated 14.7.1997 (Annexure P-5) which reads as under:-

"Subject:-Land Acquisition (Amendment) Act, 1984-enforcement thereof.

The Government have decided that the compensation awarded to the land owners in Land Acquisition Cases should have proper relevance to the

prevailing market rates. Para 12 of the Financial Commissioner's Standing Order No.28 lays down a procedure for determining Collector's rate. This procedure requires revision.

Now it has been decided that District Land Price Fixation Committee, which will be Standing Committee at District Level will deal with individual cases and make recommendations, to the District Collector in Land Acquisition Cases. The District Level Committee will consist of :

1. Deputy Commissioner:
2. M.P. of the area:
3. M.L.A. of the area:
4. Chairman Block Samiti
   (for Rural Areas) OR

   President/Municipal Commissioner (for Urban Area).
5. District Revenue Officer:
6. S.D.O (Civil) Convener.

This Committee will recommend the market rates keeping in view, the various factors regarding location, quality of land,prevailing price, Collector's rate or any other criterion to be recorded in writing by the Committee. The Committee may co-opt any other member on the Committee."

Therefore, vide letter dated 14.7.1997, para No.12 of the Standing Order No.28 has been amended, which was issued by the Government of Punjab in exercise of its power vested in it by Section 55(1) of the Act of 1894. This alteration/modification in the Standing Order,therefore, is in consonance with the provisions of Section 55 of the Act of 1894 and the Standing Order framed thereunder.

Section 11 of the Act of 1894 does not lay down if any sale deed has to be taken into consideration. It only provides that the Collector will inquire into the value of the land as it was on the date of notification published under Section 4(1) of the Act of 1894. No particular procedure is laid down in Section 11 as to how the Collector will assess the value. The Collector has assessed the value of the land on the recommendations made by the DLPF Committee of which he, himself is a member. The DLPF Committee has assessed the market value keeping in view the relevant factors. The market price assessed in the award dated 6.1.1999 is nothing else except the rates recommended by the District Collector which were duly approved by the Financial Commissioner. Therefore, the market value of the land acquired has been assessed in accordance with the instructions/rules framed by the Government of Punjab under Section 55(1) of Act of 1894 and this criteria is neither hostile to the provisions of Section 11 of the Act of 1894 nor violative of it.

Now, let us examine the reasons given by the Collector while assessing the compensation for the acquired land in the award dated 6.1.1999. It reads as under:-

> "4. MARKET VALUE.
>
> The Deputy Commissioner, Jalandhar was requested to supply the market price of land prevailing in the revenue estate of village Suchi Pind where the land in question is situated. The market rates have been got approved from Financial Commissioner, Revenue Punjab by the Deputy Commissioner, Jalandhar on the basis of the recommendation of District Land Price Fixation Committee. The Deputy Commissioner have the approval vide letter No.512/LAC, dated 23.12.98 that the market price of the land being acquired by the Hindustan Petroleum Corporation has been approved by Financial Commissioner, Revenue Punjab vide letter No.1/69/98-LRI/9856 dated 21.12.98 @ Rs.27,00,000/- (Twenty Seven lacs only) per acre. This letter is attached as Annexure A with this award. Accordingly, I award the same as Rs.27 lacs per acre for all kinds of land as market price."

These observations clearly reveal that the Deputy Commissioner (District Collector) had made recommendation on the basis of report of DLPF Committee and he forwarded the same to the

Financial Commissioner for approval. The same rates were approved by the Financial Commissioner and the approval was communicated to the Deputy Commissioner and the market value of the land acquired has been assessed by the Land Acquisition Collector in accordance with the rates proposed by the Deputy Commissioner as approved by the Financial Commissioner at the rate of Rs.27 lacs per acre. The letter dated 14.7.1997 lays down that DLPF Committee shall recommend the market rates keeping in view the various factors like location of the land, quality of land, prevailing price and the Collector's rates or any other criterion to be recorded in writing by the said Committee. Therefore, the DLPF Committee of which the Deputy Commissioner himself is a member has taken into consideration all the facts before determination of the market value of the land sought to be acquired and the Deputy Commissioner has made recommendations on its basis which were duly approved by Financial Commissioner. Therefore, the award dated 6.1.1999 does not show if any arbitrary formula was adopted by the Land Acquisition Collector while awarding the market value of the land acquired. He has merely relied upon the recommendations made by the Deputy Commissioner as approved by the Financial Commissioner.

It is not denied by the learned State counsel that earlier the respondents had informed the petitioner vide letter dated 26.2.1997 (Annexure P-3) that the tentative value of the land has been assessed at

the rate of Rs.16 lacs per acre after examining various sale deed. When the Land Acquisition Collector passed award dated 6.1.1999, he assessed the market value of the land at Rs.27 lacs per acre as determined by the Financial Commissioner on the recommendations made by the Deputy Commissioner-cum-District Collector as in his opinion this was the proper amount to be assessed as the market value of the land acquired. The Collector could not have passed the award at the lower rate than the rate recommended by the Deputy Commissioner to the Financial Commissioner and as approved by the later. Therefore, the original price quoted by the Land Acquisition Collector at Rs.16 lacs per acre was only tentative. It was neither final nor conclusive nor it has closed the doors for ever in re-assessing the market value of the land. Therefore, the petitioner-Corporation cannot draw any benefit from letter dated 26.2.1997 as the petitioner was communicated only tentative market price of the acquired land. Moreover, the market value of the land assessed at Rs.27 lacs per acre is neither arbitrary nor without any basis nor motivated by any extraneous consideration.

It may also be noticed that the petitioner had filed written statement before the Court of Additional District Judge-cum-Land Acquisition Tribunal, Jalandhar in the land references moved by the land owners for enhancement of the rate of compensation from Rs.27 lacs per acre to Rs.50,000/- per Marla. In the said written statement filed by the petitioner before the Additional District Judge, Jalandhar,

(Annexure R-7/1),the petitioner had pleaded that the market value of the property has been rightly assessed by the Land Acquisition Collector and **as per the procedure laid down.** It was not an act of omission on the part of the petitioner but it was repeated by the petitioner at about 4 or 5 places in the written statement that the market value of the property as assessed by the Land Acquisition Collector was right and properly determined at the rate of Rs.27 lacs per acre. In para No.5 of the written statement, the petitioner had pleaded that the award was rightly passed, after inspection at the spot and by taking into consideration, the market value of the property and apertures thereon.

Once the petitioner has taken this plea before the Additional District Judge, it has no right to turn back and plead in the writ petition that the compensation has been assessed by the Land Acquisition Collector at a highly excessive rate without taking into consideration the relevant factors. In the written statement before the Additional District Judge, it is mentioned that the rate has been fixed by the Land Acquisition Collector **as per the procedure laid down.** On that count also, the petitioner cannot turn back and complain that the procedure adopted is violative of the provisions of Section 11 of the Act of 1894. Once it is proved that the petitioner has justified the fixation of market value of the land acquired at the rate of Rs.27 lacs per acre, it cannot turn back now and argue that the procedure adopted is violative of Section 11 of Act of 1894. For this reason also, it is held

that the compensation has been properly assessed by the Land Acquisition Collector vide award dated 6.1.1999 and proper procedure has been adopted.

Moreover, the award passed by the Additional District Judge-cum-Land Acquisition Tribunal on 17.1.2003 upholding the market value of the acquired land at the rate of Rs.27 lacs per killa has become final. Therefore, the chapter is closed. It cannot be reopened in these proceedings as this order has not been challenged.

For the reasons discussed above, I find no legal infirmity in the award dated 6.1.1999 passed by the Land Acquisition Collector-cum-Sub Divisional Magistrate (Civil), Jalandhar,respondent No.2 and it is held that the compensation has been properly assessed at the rate of Rs.27 lacs per acre.

This petition is accordingly dismissed.

The amount deposited by the petitioner be remitted to the Land Acquisition Tribunal for disbursing the same to the concerned land owners/respondents as per the award dated 6.1.1999.

September 6,2006. (S. N. Aggarwal)
Jaggi Judge